

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

<b>IN RE: AVANDIA MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION</b>	:	
	:	
	:	<b>MDL No. 1871</b>
	:	<b>07-MD-01871-CMR</b>

---

<b>THIS DOCUMENT APPLIES TO ALL THIRD-PARTY PAYOR ACTIONS</b>	:	
	:	
	:	

---

**MOTION AND INCORPORATED MEMORANDUM IN SUPPORT FOR  
APPOINTMENT OF JAMES R. DUGAN, II AND THE MURRAY LAW FIRM AS  
LEAD COUNSEL AND INTERIM CLASS COUNSEL FOR THIRD-PARTY  
PAYOR PLAINTIFFS**

NOW INTO Court comes James R. Dugan, II of the Murray Law Firm who respectfully moves that this Honorable Court to be appointed as class counsel on behalf of a class of third-party payors in *In Re: Avandia Marketing, Sales Practices and Products Liability Litigation* (“Avandia MDL”).

**I. INTRODUCTION**

James R. Dugan, II is lead counsel in both of the private third-party payor cases currently in the Avandia MDL: *Allied Services Division Welfare Fund v. Smithkline Beecham Corp. et. al*, No. 09-00730-CMR, and *UFCW Local 1776 and Participating Employers Health and Welfare Fund v. Smithkline Beecham Corp. et. al*, No. 10-02475-CMR, both of which were filed directly in the United States District Court for the Eastern District of Pennsylvania<sup>1</sup>. Mr. Dugan makes this application for a position as lead counsel and interim class counsel to represent the interests of third-party payors. These claims are non-personal injury claims that seek refunds for payments for Avandia.

Counsel is aware of proposed settlements for personal injury plaintiffs in this case, but to Counsel's knowledge, the economic claims being asserted in the third-party payor cases will not be covered as part of the proposed settlements in the MDL. Due to the very different nature of the economic sales and marketing third-party payor cases from the personal injury cases, a separate leadership structure for counsel is warranted. A similar separate structure has been adopted in other pharmaceutical litigation MDLs where economic injury-only cases were combined with personal injury cases such as *In Re: Zyprexa Products Liability Litigation*, which has lead counsel for third-party payor cases separate and apart from the personal injury PSC, and *In Re: Neurontin Marketing & Sales Practices Litigation*, MDL 1629, which has two separate PSCs, one for personal injury cases and one for consumer and third-party payor cases.

## II. QUALIFICATIONS OF COUNSEL

James R. Dugan, II, gained valuable experience working with the late Wendell H. Gauthier and the Law Firm of Gauthier, Downing, LaBarre, Beiser & Dean in the areas of class action, mass tort, and complex litigation, beginning with the seminal class action lawsuit filed against the tobacco industry on the basis of nicotine addiction, *Castano v. American Tobacco, et al.* After Mr. Gauthier's untimely death in December of 2001, Mr. Dugan formed the Dugan & Browne Law Firm continuing to specialize in class action and mass tort litigation. In May of 2006, the Dugan & Browne Law Firm and the Murray Law Firm merged interests continuing to specialize in class action and mass tort litigation. Mr. Dugan is willing and able to commit to a time consuming project, can work cooperatively

---

<sup>1</sup> A third case filed in the U.S. District Court for the Northern District of California by a governmental entity, Santa Clara County, California, has recently been transferred to the Avandia MDL. *County of Santa Clara v. Smithkline Beecham Corporation et al.* Case No. 10-01637-CMR

with the Court and all counsel, and he has extensive experience in complex and class action litigation.

Over the years, Mr. Dugan has specialized in the area of complex and class action litigation representing numerous large institutional clients, including Blue Cross of Louisiana and other health insurers in cases against the manufacturers of Synthroid, Fen-Phen, Rezulin, Neurontin, Vioxx, Zyprexa, Bextra/Celebrex, Oxycontin, Ketek, Vytorin, and Actimmune. Mr. Dugan also represents the State of Louisiana Attorney General in the Synthroid, Baycol, Vioxx, and Bextra/Celebrex cases.

Mr. Dugan's experience in complex and class action litigation will be beneficial to the parties and the court in the successful resolution of these cases. Mr. Dugan has served in leadership positions in the following Federal Court complex cases:

*Synthroid Marketing Litigation*, (MDL 1182), (1997-2004) United States District Court for the Northern District of Illinois, Eastern Division, Judge Elaine E. Bucklo. Mr. Dugan served as co-lead counsel in this national class action on behalf of third-party payors that were overcharged for the thyroid medication Synthroid; *Diet Drugs Litigation*, (MDL 1203), (1997-2002) United States District Court for the Eastern District of Pennsylvania, Judge Lewis C. Bechtle. Mr. Dugan filed a national class action on behalf of third-party payors in *Louisiana HMO v. American Home Products, et al.* Mr. Dugan was also co-lead counsel for a large group of individually represented third-party payors; *Propulsid Litigation*, (MDL 1355), (2000-Present) United States District Court, Eastern District of Louisiana, Judge Eldon Fallon. Mass Tort Products Liability case involving thousands of individuals injured from the use of the heartburn medicine Propulsid. Member: Plaintiff's Steering Committee; *Rezulin Products Liability Litigation*, (MDL 1348), (2000-Present)

United States District Court, Southern District of New York, Judge Lewis A. Kaplan. Mass tort products liability action involving claims by individuals for personal injury and claims by the healthcare industry to recoup costs associated with paying claims on behalf of members. Mr. Dugan was appointed by the court as Liaison Counsel to a class of Health Benefit Providers; *Industrial Life Insurance Litigation*, (MDL 1371), (2000-Present) United States District Court, Eastern District of Louisiana, Judge Martin L.C. Feldman, presiding. Case involving hundreds of thousands of African-Americans who were charged higher premiums than Caucasians for the same type of burial insurance policies. Member: Plaintiff's Executive Committee; *Inter-Op Hip Prosthesis Product Liability Litigation*, (MDL 1401), (2001-Present) United States District court, Northern District of Ohio, Eastern Division, Judge Kathleen O'Malley. Mass tort products liability case involving thousands of claims for personal injury over the recall of a defective hip implant. Member: Plaintiff's Steering Committee.; *Baycol Products Liability Litigation*, (MDL 1431), (2001-Present) United States District Court, District of Minnesota, Judge Michael Davis. Mass tort products liability case involving thousands of individuals who suffered personal injury over the defective drug Baycol. Member: Plaintiff's Steering Committee; *Meridia Products Liability Litigation*, (MDL 1481), (2002-Present) United States District Court, Northern District of Ohio, Judge James S. Gwin. Mass tort products liability case involving thousands of individuals who suffered personal injury over the defective drug Meridia. Member: Plaintiff's Steering Committee; *Serzone Products Liability Litigation* (MDL 1477), (2002-Present) United States District Court, Southern District of West Virginia, Judge Joseph R. Goodwin. Mass tort products liability case involving thousands of individuals who suffered personal injury over the defective drug Serzone. Member:

Plaintiffs' Steering Committee; *Neurontin Marketing, Sales Practices, & Products Liability Litigation (MDL 1659)*, (2004-Present) United States District Court, District of Massachusetts, Judge Patti B. Saris. Mr Dugan is one of six Class Counsel seeking a refund of monies spent on behalf of consumers and third party payors for payments for illegal off-label promotion and use of the drug Neurontin. Member: Plaintiffs' Steering Committee; *Vioxx Products Liability Litigation (MDL 1657)*, (2005-present) United States, Eastern District Court of Louisiana, Judge Fallon, Magistrate Judge Knowles. Member: Co-Chair Purchase Claims Committee; *Zyprexa Products Liability Litigation (MDL 1596)*, (2005-present) United States District Court for the Eastern District of New York, Judge Weinstein and Magistrate Judge Chrein. Member: Co-Lead Counsel for the Purchase Claims; *Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation (MDL 1699)*, (2006-present) United States District Court, Northern District of California, Judge Breyer. Member: Purchase Claims Committee; *Fosamax Products Liability Litigation (MDL 1789)* (2006-present) United States District Court Southern District of New York, Judge Keenan. Member: Plaintiffs' Steering Committee; *Oxycontin Marketing and Sales Practices Litigation* (2007-present) United States District Court for the Southern District of New York., Judge Koel. Co-lead counsel for third party payors; *Ketek Marketing and Sales Practices Litigation* United States District Court Eastern District of New York, Judge Townes. Co-lead Counsel for third party payor; *Vytorin/Zeta Marketing, Sales Practice, and Products Liability Litigation (MDL 1938)* United States District Court District of New Jersey, Judge Dennis M. Cavanaugh: Member of Plaintiff's Steering Committee; *In Re: Actimmune Marketing Litigation* 08-CV-3797-MHP United States District Court for the Northern District of California, Judge Marilyn H. Patel.

In addition to Federal MDL appointments, Mr. Dugan is lead counsel in the following State Court class action cases:

*US Agencies Casualty Insurance Company, Inc., et al. v. Bridgestone/Firestone, Inc.* (2004-present), Judge Sanders, 60<sup>th</sup> Judicial District Court, Jefferson County, Texas. Lead counsel for a class of property damage insurers to recoup their costs paid out due to Firestone tire rollover property damage cases; *Roxy Wright, Rosalie F. Miranda, et al. v. Tenet Louisiana, Inc., et al.* (2004-present), Judge Nadine M. Ramsey, Civil District Court for the Parish of Orleans, State of Louisiana. Lead Counsel for a class of uninsured patients who were billed excessive hospital charges for care. Settled.; *Rose Goudeau, et al v. The Administrators of the Tulane Educational Fund, et al.,* (2004-Present) Judge Madeleine M. Landrieu, Civil District Court for the Parish of Orleans, State of Louisiana. Lead counsel for a certified class of family members whose loved ones donated their bodies to the Tulane Willed Body Program but were sold by Tulane to third parties for profit; *State of Louisiana v. Bayer, et al., Case Number 04-439* (2004-Present) Judge Piper D. Griffin, Civil District Court for the Parish of Orleans, State of Louisiana. Lead counsel on behalf of the State of Louisiana and the Attorney General to recoup all costs expended by the State of Louisiana on behalf of the drug Baycol.

Mr. Dugan received his B.A. from the University of Southwestern Louisiana in Lafayette and my J.D. from the Loyola University School of Law in New Orleans, Louisiana. He is a member of the Louisiana Bar and has also been admitted to practice before a number of federal courts, including the Eastern and Middle Districts of Louisiana, and the Southern District of Alabama. He is an active member in a number of respected legal associations, including the Louisiana Trial Lawyers Association, the Jefferson Parish

and Orleans Parish Bar Associations, and the Louisiana State and American Bar Associations. He was also listed by the American Trial Lawyers Association as one of the Top 100 Trial Lawyers for 2007 and 2008. He is also married to Mrs. Heidi Dugan and have two sons, James III and Jackson Dugan.

### **III. CONCLUSION AND PRAYER**

WHEREFORE, James R. Dugan, II of Murray Law Firm, respectfully requests this court issue an Order appointing him as lead counsel and interim class counsel on behalf of a class of third-party-payors in the instant litigation.

Dated: July 14, 2010

Respectfully submitted,

MURRAY LAW FIRM

/s/ James R. Dugan, II  
James R. Dugan, II (LSBA No. 24785)  
Douglas R. Plymale (LSBA No. 28409)  
650 Poydras Street, Suite 2150  
New Orleans, Louisiana 70130  
Telephone: (504) 648-0180  
Facsimile: (504) 648-0181

Art Sadin  
Sadin Law Firm, P.C.  
121 Magnolia  
Suite 102  
Friendswood, Texas 77546  
Phone: 281-648-7711  
Fax: 281-648-7799

Eric L. Young  
Gerard P. Egan  
EGAN YOUNG  
526 E. Township Line Road, Suite 100  
Blue Bell, Pennsylvania 19422  
Phone: 215-367-5151  
Fax: 215-367-5143